

FCC MAIL SECTION

Before the
Federal Communications Commission
Washington, D.C. 20554

Jul 23 1993

DISPATCHED BY
FCC Docket No. 93-211

In the Matter of

Amendment of Section 73.202(b), RM-8285
Table of Allotments,
FM Broadcast Stations.
(Arizona City, Arizona)

NOTICE OF PROPOSED RULE MAKING

Adopted: July 1, 1993;

Released: July 22, 1993

Comment Date: September 17, 1993

Reply Comment Date: October 4, 1993

By the Chief, Allocations Branch:

1. Before the Commission for consideration is the petition for rule making filed on behalf of Arizona City Broadcasting Corporation ("petitioner"), licensee of Station KONZ(FM), Channel 292A, Arizona City, Arizona, seeking the substitution of Channel 293A for Channel 292A and modification of its authorization accordingly to specify operation on the alternate Class A channel. Petitioner neglected to state its intention to apply for Channel 293A if allotted to Arizona City, and is requested to correct the procedural deficiency in its comments. See paragraph 2 of the attached Appendix.

2. In support of its proposal, petitioner states that the requested channel substitution will enable it to increase significantly its signal coverage area. In this regard, according to petitioner's engineering statement, KONZ(FM) currently provides signal coverage within its 70 dBu and 60 dBu contours to approximately 9,688 persons and 16,838 persons,¹ respectively. The substitution of Channel 293A at Arizona City would enable Station KONZ(FM) to extend its city grade and primary service coverage to approximately an additional 25,927 persons and 46,486 persons, representing an increase of 16,239 persons (167%) and 29,648 persons (176%), respectively.

3. A staff analysis confirms that Channel 293A can be allotted to Arizona City consistent with the minimum distance separation requirements of Section 73.207(b)(1) and (3) of the Commission's Rules without a site restriction, as specified by the petitioner.² However, since Arizona City is located within 320 kilometers (199 miles) of the Mexican border, the Commission must seek concurrence of the Mexican government in this proposal.

4. We believe the public interest would be served by proposing the substitution of Channel 293A for Channel 292A at Arizona City since it could provide an enhanced service to the community. Therefore, we shall propose to modify the petitioner's license for Station KONZ(FM) to specify operation on Channel 293A in lieu of Channel 292A, as requested. We will not accept competing expressions of interest in this equivalent channel substitution.

5. Accordingly, we seek comments on the proposed amendment to the FM Table of Allotments, Section 73.202(b) of the Commission's Rules with respect to Arizona City, Arizona, as follows:

	Channel No.
City	Present Proposed
Arizona City, Arizona	292A 293A

6. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

7. Interested parties may file comments on or before September 17, 1993, and reply comments on or before October 4, 1993, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner's counsel, as follows:

Nancy L. Wolf, Esq.
Dow, Lohnes & Albertson
1255 - 23rd Street, N.W.
Suite 500
Washington, D.C. 20037

8. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), and 73.606(b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

9. For further information concerning this proceeding, contact Nancy Joyner, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of

¹ Population figures referenced herein are based upon the 1990 U.S. Census.

² Coordinates used for Channel 293A at Arizona City are 32-45-21 and 111-40-13.

any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Michael C. Ruger
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.